

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION, DAYTON**

PLINIO ALVARADO QUINONEZ,	:	
	:	
Plaintiff,	:	Case No. 3:21-cv-159
	:	
v.	:	JUDGE WALTER H. RICE
	:	
IMI MATERIAL HANDLING	:	
LOGISTICS INC., et al.	:	
	:	
Defendants,	:	
	:	
And	:	
	:	
NP DAYTON BUILDING IV, LLC,	:	
NPD MANAGEMENT, LLC, AND	:	
NORTHPOINT DEVELOPMENT, LLC	:	
	:	
Defendants/Third Party Plaintiffs,	:	
	:	
v.	:	
	:	
CROCS, INC.	:	
c/o Legal Department	:	
7477 East Dry Creek Parkway	:	
Niwot, CO 80503	:	
	:	
Third Party Defendant.	:	

**DEFENDANTS/THIRD-PARTY PLAINTIFFS NP DAYTON BUILDING IV, LLC, NPD  
MANAGEMENT, LLC, AND NORTHPOINT DEVELOPMENT, LLC’S THIRD-PARTY  
COMPLAINT AGAINST THIRD-PARTY DEFENDANT CROCS, INC.**

**-Jury Demand Endorsed Hereon-**

Now come Defendants/Third-Party Plaintiffs NP Dayton Building IV, LLC, NPD Management, LLC, and Northpoint Development, LLC (hereafter referred to as “NP Defendants”), by and through counsel, and for their Third-Party Complaint against Third-Party Defendant Crocs, Inc. state as follows:

1. Plaintiff Plinio Alvarado Quinonez, (hereinafter “Plaintiff”) filed a Complaint in this matter against Defendants IMI Material Handling Logistics, Inc.; Dematic Corp.; Clayco, Inc.; Crocs, Inc.; NP Dayton Building, IV, LLC; NPD Management, LLC; Northpoint Development, LLC; Laporte Consultants Corp.; Sergio Romero; Lorenzo Avila; Justin Parsons; and John Does 1, 2, 3, 4, 5, 6, and 7. Plaintiff’s Complaint is incorporated by reference as though fully rewritten herein, not for the purpose of adopting the allegations contained therein as being true and correct, but rather to support the basis upon which the claims in this Third-Party Complaint are made against Crocs, Inc. (A copy of the Complaint is attached hereto as Exhibit “A”).

2. On October 25, 2018, NP Dayton Building IV, LLC entered into a written lease agreement with Crocs, Inc. (A copy of the Lease is attached hereto as Exhibit “B”).

3. The Lease between NP Dayton Building, IV, LLC and Crocs, Inc. (hereafter referred to as the “Lease”) identified NP Dayton Building IV, LLC as “Landlord” and Crocs, Inc. as “Tenant”.

4. The Lease was for the premises shown on the floor plan attached to the Lease as Exhibit A-1 and identified as a “certain to be constructed building” located on the real property described in Exhibit A-2 of the Lease (Exhibit B).

5. The premises, including the “certain to be constructed building”, became a warehouse for Crocs, Inc., was known as the “Crocs Project”, and was given the address of 10391 Dog Leg Road, Vandalia, Ohio 45377.

6. Section 14(a) of the Lease sets forth certain duties and obligations of Crocs, Inc. to provide certain indemnity for NP Dayton Building IV, LLC and its agents and states in pertinent part:

Except to the extent Claims (as defined in this Section below) arise from the negligence or willful misconduct of Landlord or any Landlord Party,<sup>1</sup> Tenant releases, indemnifies, protects, defends (with counsel reasonably acceptable to the Landlord), and hold Landlord and all Landlord Parties harmless from and against all Claims<sup>2</sup> to the extent arising from (a) any use of occupancy of, or activities within, the Premises or Property by Tenant or any Tenant party, (b) any default by Tenant under this Lease, (c) any negligence or willful misconduct of Tenant or any Tenant Party, (d) any accident, injury, or damage in or to the Premises, and (e) to the extent caused by Tenant or any Tenant Party,<sup>3</sup> any accident, injury, or damage in, about, or to the Property. ... The indemnity provided for in this Section shall survive the expiration or termination of this Lease.

7. After Crocs, Inc. entered into the Lease, it entered into a Master Services Agreement with Defendant Dematic Corp. for the provision and installation of a multi-shuttle system for Crocs, Inc.'s warehouse. (A copy of the Master Services Agreement is attached as "Exhibit C").

8. Crocs, Inc. actively participated in and directed Defendant Dematic's, including Plaintiff's, installation of the multi-shuttle system.

9. By and on June 17, 2019, Crocs, Inc. was using, occupying, and controlling the warehouse, located at 10391 Dog Leg Road, Vandalia, Montgomery County, Ohio.

10. On June 17, 2019, Plaintiff alleges he fell twelve and a half feet from a scaffolding platform onto the concrete floor in the warehouse, located at 10391 Dog Leg Road, Vandalia, Montgomery County, Ohio, and sustained injuries.

11. Plaintiff allegedly fell off the scaffolding platform while installing a part of the multi-shuttle system being installed by Defendant Dematic in Croc, Inc.'s warehouse.

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<sup>1</sup> The Lease defines "Landlord Party" as "Landlord's members, shareholders, officers, managers, agents, employees, contractors, invitees, or subtenants." (Lease, Section 2(ff)).

<sup>2</sup> The Lease defines "Claims" as "all claims, actions, demands, liabilities, damages, costs, penalties, forfeitures, losses, or expenses including, without limitations, reasonable attorneys' fees and the costs of enforcing any obligation under the Lease."

<sup>3</sup> Under the Lease, "Tenant Party" is defined as "Tenant's members, shareholders, officers, managers, agents, employees, contractors, invitees, subtenants, or any person on the Premises by reason of the Tenant's use or occupancy of the Premises." (Lease, Section 2(hhh)).

12. Due to its acts, omissions, negligence, Crocs, Inc was involved in, responsible for, and proximately caused Plaintiff's fall on June 17, 2019.

13. On June 17, 2019, NP Dayton Building IV, LLC was the owner of the premises and building (the "Crocs Project") located at 10391 Dog Leg Road, Vandalia, Montgomery County, Ohio 45377.

14. On June 17, 2019, NPD Management was the property management company for the Crocs Project located at 10391 Dog Leg Road, Vandalia, Montgomery County, Ohio 45377.

15. On June 17, 2019, Northpoint Development, LLC was the building developer for the Crocs Project located at 10391 Dog Leg Road, Vandalia, Montgomery County, Ohio 45377.

16. On June 17, 2019, Crocs, Inc. was the Lessee of the warehouse building located at 10391 Dog Leg Road, Vandalia, Montgomery County, Ohio 45377 (hereafter referred to as "Warehouse").

17. In his Complaint, Plaintiff alleges NP Dayton Building IV, LLC, NPD Management, and Northpoint Development, LLC are liable to him under three claims: Count III (Employer Duty to Protect Employees and Frequenters under Ohio Revised Code 4101.11); Count IV (Employer Duty to Furnish Safe Place of Employment under Ohio Revised Code 4101.12); and Count VI (Negligence).

18. As Lessee, Crocs, Inc. was in control of and occupying the Warehouse on June 17, 2019 and at all times relevant.

19. As Lessee in control and occupation of the Warehouse on June 17, 2019, Crocs, Inc. owed various duties to Plaintiff that include but are not limited to duties to provide a safe workplace and premises to Plaintiff on June 17, 2019, duty to refrain from injuring Plaintiff while at the Warehouse on June 17, 2019, duty to warn Plaintiff of any latent or hidden dangers at the

Warehouse on June 17, 2019, that Crocs, Inc. knew or should have known about, duty to repair any latent or hidden dangers at the Warehouse on June 17, 2019, that Crocs, Inc. knew or should have known about.

20. At all times relevant, NPD Management and Northpoint Development LLC were agents of NP Dayton Building IV, LLC.

21. On December 21, 2021, Plaintiff's claims against Crocs, Inc. were dismissed, and Crocs, Inc. is no longer a party to this lawsuit.

### **COUNT I – CONTRIBUTION**

22. Defendants/ Third-Party Plaintiffs NP Dayton Building IV, LLC, NPD Management, LLC, and Northpoint Development, LLC incorporate by reference, as though fully rewritten herein, each and every averment, allegation and statement contained in the foregoing paragraphs.

23. Any negligence of the NP Defendants found to have occurred in this matter with respect to Plaintiff's June 17, 2019 fall was committed with Crocs, Inc.

24. The NP Defendants and Crocs Inc. are joint tortfeasors with respect to the injuries and/or damages allegedly sustained by Plaintiff in his fall on June 17, 2019.

25. To the extent that NP Defendants pay more than their respective share(s) of liability, the NP Defendants are entitled to contribution from Crocs, Inc. with regard to Plaintiff's claims and alleged injuries and damages.

### **COUNT II—INDEMNIFICATION**

26. Defendants/Third-Party Plaintiffs NP Dayton Building IV, LLC, NPD Management, LLC, and Northpoint Development, LLC incorporate by reference, as though fully

rewritten herein, each and every averment, allegation and statement contained in the foregoing paragraphs.

27. Crocs Inc. was primarily and actively negligent with respect to the events involving Plaintiff that occurred on June 17, 2019.

28. Any negligence of the NP Defendants with respect to Plaintiff that occurred on June 17, 2019 was passive and secondary.

29. If Plaintiff recovers from the NP Defendants, Dayton Building IV, LLC, NPD Management, LLC and Northpoint Development, LLC, the NP Defendants are entitled to indemnification from Crocs, Inc. to the extent of any judgment rendered in favor of Plaintiff against NP Dayton Building IV, LLC, NPD Management, LLC and/or Northpoint Development, LLC and/or to the extent of any settlement to Plaintiff paid by the any or all of the NP Defendants as a result of Plaintiff's June 17, 2019 fall.

### **COUNT III –CONTRACTUAL INDEMNIFICATION**

30. Defendants/Third-Party Plaintiffs NP Dayton Building IV, LLC, NPD Management, LLC, and Northpoint Development, LLC incorporate by reference, as though fully rewritten herein, each and every averment, allegation and statement contained in the foregoing paragraphs.

31. Under the Lease, NPD Management, LLC and Northpoint Development, LLC are “Landlord Parties” as they are agents of NP Dayton Building IV, LLC at all times relevant for the Crocs Project.

32. Under the Lease, Crocs, Inc., as Tenant, has a duty to provide full indemnity to NP Dayton Building IV, LLC, Landlord, NPD Management, LLC, and Northpoint Development,

LCC, Tenant's Parties, for any injuries or damages stemming from or related to any claims made related to the Premises.

33. Under the Lease, Crocs, Inc., as Tenant, is required to provide full indemnity to NP Dayton Building IV, LLC, Landlord, NPD Management, LLC, and Northpoint Development, LCC, Tenant's Parties, for any injuries or damages stemming from or related to any use or occupancy of, or activities within the Premises or Property by Crocs, Inc.

34 Under the Lease, Crocs, Inc., as Tenant, is required to provide full indemnity to NP Dayton Building IV, LLC, Landlord, NPD Management, LLC, and Northpoint Development, LCC, Tenant's Parties, for any injuries or damages stemming from or related to any negligence of Crocs, Inc.

35. Under the Lease, Crocs, Inc., as Tenant, is required to provide full indemnity to NP Dayton Building IV, LLC, Landlord, NPD Management, LLC and Northpoint Development, LCC, Tenant's Parties, for any injuries or damages stemming from or related to any accident, injury or damage on the Premises.

36. Under the Lease, Crocs, Inc. is contractually obligated to defend, indemnify, and hold harmless the NP Defendants for the claims of the Plaintiff.

37. The NP Defendants made a formal defense tender and request for indemnification under the terms of the Lease to Crocs, Inc., and the defense tender and indemnification request were not accepted and/or agreed to by Crocs, Inc. or any agent thereof.

**WHEREFORE,** Defendants/Third-Party Plaintiffs NP Dayton Building IV, LLC, NPD Management, LLC, and Northpoint Development, LLC demand a finding that they are entitled to contribution and/or indemnification from Third-Party Defendant Crocs, Inc. for Plaintiff's injuries, damages and claims that stem from the events at the warehouse on June 17, 2019, and that they

be awarded their costs and expenses, including but not limited to, attorney fees and expenses against Crocs, Inc., and for any other relief that this Court deems appropriate.

Respectfully submitted,

**WESTON HURD, LLP**

/s/ Steven G. Carlino

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*Attorneys for Defendants NP Dayton Building IV,  
LLC, NPD Management, LLC, and Northpoint  
Development, LLC*

**JURY DEMAND**

This Defendant demands that all issues of this case be tried to a jury.

/s/ Steven G. Carlino

Steven G. Carlino (0073734)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing was filed and served through the Clerk's electronic filing system, this 10<sup>th</sup> day of March 2022 to all attorneys of record and to the following via certified mail:

CROCS, INC.  
c/o Legal Department  
7477 East Dry Creek Parkway  
Niwot, CO 80503

Steven. G. Carlino

Steven G. Carlino